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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,109	04/09/2004	Peter Ploumitsakos	753-002	1712

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EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,109

Applicant(s)

PLOUMITSAKOS, PETER

Examiner

Luan K. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 and 4 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "said hingeably secured longitudinal edge" in claim 3 and "said first securing means" and "said complimentary compartments" in claim 4 lack proper antecedent basis. In claim 4, "said complimentary housing members" should be replaced with --said complimentary shell members--.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3 and 5 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Clegg (6,520,514). Clegg discloses a mobile box (10) comprising a housing member formed of a first and second complimentary, rigid shell member (20, 50) having complementary peripheries and a securing means (62, 64) about the complementary peripheries. The first shell member having a pair of wheels (70, 72, 82) axially mounted at one longitudinal end, a handle means (92-

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94) secured to an opposing longitudinal end and a plurality of complimentary opposing channels (36a-j) formed on its inner side walls adapted to receive a plurality of rigid panels (100, 120, 140, 160 and column 10, lines 52-65) (Figure 1). The box of Clegg is inherently capable for storage and transport of hand tools and power tools and also capable of allowing the box to be transported to and from a work site. As to claim 3, Clegg discloses the complimentary rigid shell members comprises a first securing means (62a, 64a, Figure 3) positioned on the longitudinal edge of the box.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Clegg (6,736,265) in view of Kipper et al. (6,736,265; hereinafter kipper'265). Clegg discloses the box as above having all the limitation of the claim except for the shell members being hingeably secured along one longitudinal edge. Kipper'265 shows a box (100) comprising a housing member formed of a first shell member (105, 110) and a second shell member (12). The second shell member is hingeably secured along one longitudinal edge to the first shell member. It would have been obvious to one having ordinary skill in the art in view of kipper'265 to modify the housing member of Clegg so the first shell member is hingedably secured along one longitudinal edge to the second shell member to facilitate opening/closing the box.

7. Claim 4 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Clegg (6,736,265) in view of Official Notice and McCreary (6,247,588). Clegg further discloses the box can be used to transport items in the user's automobile trunk/permanent fixture (column 7, lines 10-12). However, Clegg fails to show the box comprises a flexible securing means for securing the box to a permanent fixture. Official Notice is taken of the old and conventional practice for providing a securing means for securing a box to an automobile to prevent the box from moving. McCreary, is cited by way of example only, teaches a bag having a flexible securing means (74') for securing the bag to a permanent fixture (75)(Figure 3). It would have been obvious to one having ordinary skill in the art in view of Official Notice and McCreary to modify the box of Clegg so the box includes a flexible securing means for securing the box to a permanent fixture to prevent the box from moving during transportation. The selection of the specific location for the flexible securing means secured to the housing member such as one longitudinal end of the complimentary shell members would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using these specific location as claimed solves any particular problem or yields any unexpected results.

Response to Arguments

Applicant's arguments filed on 11/10/2005 have been fully considered but they are not deemed to be persuasive.

In response to applicant's argument that Clegg fails to suggest or imply the box for the storage of hand tools, power tools and the like, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

The hinge as recited in claim 2 is read on at least one hinge of Kipper.

Applicant's argument with respect to McCreary in the remarks is noted. This is not persuasive because McCreary is relied upon for the flexible securing means only and nothing more.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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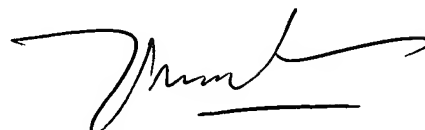
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370. **Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
December 14, 2005



Luan K. Bui
Primary Examiner